

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Inquiry by the Department of Telecommunications and
Energy, on its own Motion, Pursuant to G.L. c. 164, §
1F to Investigate the Use of the New England Generation
Information System.**

D.T.E. 03-62

COMMENTS OF THE DIVISION OF ENERGY RESOURCES

On June 13, 2003 the Massachusetts Department of Telecommunications and Energy ("Department") issued an Order opening an inquiry into the use of the New England Generation Information System ("GIS") for the purpose of complying with the Department's Information Disclosure Requirements. D.T.E. 03-62 (2003). The Order announced a Technical Session to be held on July 2, 2003 in order for the Department to provide interested parties an opportunity to discuss the new GIS as it relates to the Department's existing Information Disclosure Requirements. 220 C.M.R. §11.06.

A. Overview

The Massachusetts Division of Energy Resources ("DOER") commends the Department for opening this investigation. Now that the GIS is operating, it is timely for the Department to consider its use by retail suppliers¹ for compliance with the Department's disclosure regulations. Similarly, DOER has been addressing the use of the GIS as suppliers approach the first trading period of 2003 for renewable energy certificates ("REC's") in compliance with the state's Renewable Energy Portfolio

¹ For the purpose of this filing references to "retail suppliers" shall be understood to apply to both the Competitive Suppliers licensed to sell electricity in the state of Massachusetts and the Distribution Companies who provide Standard Offer and Default Service. See also DTE 03-62, page 1, note 1 (2003).

Standard ("RPS").² Because the GIS was not designed or operating when the Department's disclosure requirements were promulgated, DOER believes that those regulations will be more meaningful when the Department prescribes a particular method for using the GIS. The Department has clearly articulated the importance of presenting labels with consistent information. 220 C.M.R. § 11.06 (2)(a).³ DOER agrees that information should be consistent among the offers available to customers. Customers should be given the capability to choose between offers with confidence that disclosure labels are based upon consistent metrics from offer to offer.⁴ DOER emphasizes that consistency for the use of the GIS is also important to the suppliers when complying with both disclosure and RPS requirements.

Furthermore, DOER supports the Department's move to address other issues related to disclosure that clarify the disclosure regulations and enhance the value and usefulness of disclosure labels.

The issues raised during the July 2nd technical session were divided into two portions addressing the Department's Label Disclosure Requirements: (1) the use of the GIS; and (2) revisions the Department should consider regarding disclosure requirements.⁵ Toward that end, DOER offers the following comments addressing issues in the same order.

B. Using the Generation Information System

DOER supports using the GIS as a basis for the reporting of fuel source, emissions, and labor information. However, DOER does not support the use of GIS as the "sole basis" for such reporting.⁶ DOER considers information from the GIS to be

² Suppliers are required to submit annual reports to DOER in compliance with RPS. On May 15, 2003 DOER distributed a document entitled "*Guidance for Retail Electricity Suppliers on the Use of NEPOOL-GIS Sub-Accounts for the Purpose of Documenting Massachusetts RPS Compliance*" to retail suppliers as well as to entities that have expressed an interest in becoming licensed brokers for the National Grid "GreenUp" program (see Attachment 1).

³ The Attorney General has also promulgated regulations concerning information disclosure to customers that fully incorporates 220 CMR 11.06. 940 CMR 19.00: Retail Marketing and Sale of Electricity.

⁴ As will be addressed further below, this is most critical for customers who are comparing and choosing products based upon the information in the disclosure labels, such as a particular percent of renewable energy. Customers buying such products will also use the labels once they have chosen a product to confirm they have received what they paid for.

⁵ A significant portion of the technical session was spent on a concern brought by Community Energy. This issue will also be addressed below.

⁶ DTE 03-62, page 4 and 6.

necessary in order for fuel source and emissions data to be calculated by suppliers.⁷ But DOER stresses that the GIS does not provide the sufficient amount of information needed for label disclosure. One example of this is the New England regional emissions data that comes from sources other than the GIS. Another is the case of suppliers offering attribute-based products. Such suppliers do use the GIS information regarding fuel sources and emissions data. But they will also be using their own enrollment data and load reporting from the Distribution Companies to determine the amount of load to assign to each product before calculating the information from the GIS.⁸

Furthermore, the Department should consider that its own annual reporting requirements must rely on a second independent source for the purposes of verification.⁹

DOER has a similar concern regarding independent verification for RPS compliance. DOER has been attempting to find a low cost verification method that would constitute an independent audit to verify retail sales within the state by exploring possible solutions in the Electronic Business Transactions ("EBT") Working Group. This is because data being transferred between suppliers and Distribution Companies may be the most opportune time to document retail sales with the lowest amount of burden to suppliers.

For the sake of achieving consistency, the Department should consider whether such information from the EBT process would serve its own verification needs. If so, the Department should consider directing or urging the EBT Working Group to continue pursuing solutions to verification using the EBT process in a timely manner rather than requiring GIS to be the sole basis for reporting disclosure information.¹⁰ Furthermore, DOER anticipates it will be working closely with the EBT Working Group to confirm that load data reported to ISO is adequately consistent with load obligations stated by the GIS. Central to this will be a methodology that is capable of accounting for line losses in

⁷ As a point of fact, it was created, with great amounts of input from DOER, in large part to serve that particular purpose. It is worth noting that there have been recent talks about using the GIS to begin including labor information as well.

⁸ Suppliers are capable of moving their load obligations within their sub-accounts freely using the GIS. But it is only the enrollment data from the Distribution Companies that will determine the amount of load that should be assigned to individual sub-accounts.

⁹ DTE 03-62, page 6.

¹⁰ Another concern is that the GIS process creates accounts for suppliers but does not dictate how sub-accounts are created or how REC's are placed within a supplier's sub-accounts. Consequently, EBT data may be the only way to confirm the sales of a supplier (or any attribute-based products) within the Commonwealth.

a way that DOER can be satisfied that suppliers have complied with the RPS and still be consistent with GIS data.¹¹

Regarding the schedule proposed by the Department, DOER considers it to be a reasonable way to proceed. As the attached Guidance Document demonstrates, DOER has been providing guidance to suppliers on how to begin using GIS to comply with RPS (starting with the end of the July trading period as the first available GIS data).

C. Revisions to the Department's Label Disclosure Regulations

DOER would like to emphasize the importance of defining the difference between a product and an attribute-based product. The Guidance document provided as an attachment to this filing could assist the Department in drawing a distinction between suppliers providing service with no reference to attributes and suppliers who distinguish their service, for example, by offering a "green product." Furthermore, suppliers providing energy to large commercial and industrial accounts are not likely to have products per se. Instead, they have numerous contracts at different lengths of time.

DOER supports including a definition of attribute-based products in the disclosure regulations.

DOER also supports the addition of new language in the disclosure regulations that clarifies that *existing* suppliers with *new attribute-based products* operating "for less than a full year" will also be afforded the flexibility to report only the information that is available for the portion of the year that data was available. 220 CMR § 11.06 (2)(d)(1).¹² It stands to reason that calculating a disclosure statement for such products would be mathematically impossible without allowing such flexibility.

The Department also mentioned four other areas it may consider addressing in the event it opens a rulemaking to revise its disclosure regulations:¹³

1. known resources vs. system power;
2. imported power;

¹¹ It should be noted that the Distribution Companies also comply with disclosure and RPS requirements for its Standard Offer and Default Service customers but do not use EBT in the same way. DOER proposes that the Companies use the same load data reported to the ISO to be consistent with what the suppliers will report using EBT.

¹² The Department stated that "if a supplier has operated for less than a year, but more than three months, the supplier's label shall rely on information from the portion of the year that the supplier has operated." See also DTE 03-62, page 5, note 7.

¹³ DTE 03-62, page 8-9.

3. NE regional average emissions or emissions from the customer's most reasonable alternative (i.e., Default Service);
4. labels required quarterly by snail mail, email, or web site.

DOER is interested in participating in that discussion as that proceeding develops but has no particular positions to put forward at this time. DOER agrees that they are appropriate issues to address and is confident that, however the Department rules, DOER will have an ongoing interest in assuring that the label disclosure requirements will continue to be useful to customers choosing among electricity options, with the particular goal of ensuring that such requirements are consistent with its own requirements regarding RPS compliance.

D. Community Energy

A significant portion of the technical session was spent on a concern brought by Community Energy. They had commented that the existing rules for disclosure on a quarterly basis limits the amount of a 100% wind power product that can be sold to customers. The problem is a combination of the low number of wind turbines currently operating in New England as well as the challenges caused by the intermittent availability and seasonal variation of the resource. As a result, during the summer months, when wind supply is short and customer usage is peaking, there is a risk that companies like Community Energy would not be able to meet its claim of bringing a 100% wind product. If they fall even one percentage point below the 100% mark there is no mechanism in the existing system for catching up again. The reason for this is that GIS rules stipulate that a supplier's sub-account cannot exceed load for a particular trading period. As a result, if a supplier falls short for any quarter, it has no way of making back that short fall.¹⁴

The essential question being asked by Community Energy seems to be: Can disclosure requirements be changed in a way to accommodate suppliers attempting to offer 100% wind products without conflicting with the Attorney General's regulations (particularly 940 CMR 19.04 (a)), sacrificing the integrity of the GIS, or making verification meaningless?¹⁵

¹⁴ It should be noted that offering a 25% wind product would not have this problem. If it falls short in one quarter it can make up the difference in other quarters as long as it markets its product as a 25% annual product.

¹⁵ It is important to note that Community Energy is looking for a solution to this problem both as a participant in the GreenUp Program and for the competitive market in general.

At least one party had suggested that Community Energy could solve the problem by purchasing Reserve Certificates, which are certificates purchased "independent of transactions involving energy." GIS Operating Rule 3.4. For the purpose of this filing, DOER limits the discussion to the appropriateness of considering reserve certificates to be a delivered product.¹⁶ Because a reserve certificate is not required to match the period that the load was provided, DOER does not at this time consider it to be a "delivered product." DOER is not opposed to making reserve certificates available to customers as "green tag products."¹⁷ However, since label disclosure applies to electricity generated in a particular quarter and must match a supplier's load obligation to be meaningful, DOER believes the use of reserve certificates should not be included in the label disclosure but as a separate ancillary service. Therefore, it would not solve the appearance of the percent of wind disclosed. It would only change the paperwork accompanying the label. For instance, in order to use full disclosure and avoid making potentially misleading marketing claims, Community Energy would have to state: "The label shows we only bought 80% generation in Quarter 3, but our Reserves Statement from Quarter 1 shows that we bought enough surplus in Quarter 1, while wind availability was high, to cover the deficit in Quarter 3."

Because this poses a significant risk of confusion to customers, DOER does not support the use of reserve certificates as a solution to this problem at this time.

DOER has proposed another alternative that could solve the problem for 100% wind suppliers for both the GreenUp Program and the competitive market in general. DOER has maintained that providing a block product would constitute a 100% product and not run afoul of mixing marketing claims of a reserve certificate product with GIS information featured in the label disclosure.¹⁸

Customers could sign up for a 500 kWh product and be billed for that amount every month. The result would be that the load in the sub-account for that product would

¹⁶ Due to the fact that National Grid is providing regulated services, the GreenUp Program filed with the Department by National Grid on June 25, 2003 only allows the sale of a delivered product. DTE No. 1067-A, Sheet 10, Section 6A. DOER had advocated for this, pointing out that Distribution Companies in the state should be as limited to the wires business as is possible; getting into the business of selling non-delivered products such as green tags would only further blur the line between the regulated utilities and what is desired to be offered by the competitive market.

¹⁷ In fact, there are a number of companies that currently sell such products in Massachusetts who do so without becoming licensed electricity suppliers because they don't sell electricity.

be the usage of all customers enrolled in the 500 kWh block and the obligation for wind REC's would be dependent upon the number of customers enrolled rather than having to equal the usage. Such an approach would maximize the number of kilowatthours sold from wind and still be a delivered product; matching the period in which it was generated.

E. Conclusion

DOER appreciates the opportunity to provide these comments and welcomes the Department's consideration of them within the context of the overall development of the competitive market in Massachusetts. DOER believes that it is important to be addressing the above issues in a timely fashion given the upcoming trading period. Addressing these issues in consideration of revisions to the disclosure requirements is also important for marketers making their best efforts to comply with both label disclosure and RPS requirements. DOER encourages the Department to make the recommended changes and looks forward to supporting and facilitating the development of such a system in an efficient and efficacious manner.

Respectfully submitted,

Carol R. Wasserman
Deputy General Counsel

July 9, 2003

¹⁸ A block product is the offer of a certain block of kilowatthours ("kWh") that is constant every month.